# B R I E F

of the

# C A N A D I A N  J E W I S H  C O N G R E S S

to the

# S E N A T E  S P E C I A L  C O M M I T T E E

# O N  T H E  C R I M I N A L  C O D E

# (H A T E  P R O P A G A N D A)

Ottawa,
February 22, 1968

Honourable Senators:

The Canadian Jewish Congress is the organization fully representative of the Jewish community in Canada, a community with a population of upward of 250,000 according to the last census. Founded in 1919 it has since been the acknowledged spokesman of the Jewish community on public issues and has been recognized as such by municipal, provincial, federal and international authorities. In its program of community relations the Congress enjoys the active partnership of B'nai B'rith of Canada with whom it has a joint committee in this area of interest.

Your committee is meeting to consider the Bill which has been introduced to meet the evil of hate propaganda. This Bill was introduced following the Report of a Special Committee set up by the late Hon. Guy Favreau, then Minister of Justice, to inquire into this problem and recommend the most effective way of dealing with it. The seven distinguished men whom Mr. Favreau named to this Committee were in our view admirably fitted by their background, training and experience to examine this problem. The chairman was Prof. Maxwell Cohen, Dean of the McGill University Law School. The other members were Dr. J. A. Corry, the principal of Queen's University in Kingston, whose own field of teaching is political science and law; Abbe Gerard Dion, a sociologist teaching at Laval University in Quebec, whose views on social issues are known throughout Canada; Mr. Saul Hayes, Q.C. of Montreal, executive vice-president of the Canadian Jewish Congress; Dr. Mark R. MacGuigan, a Maritimer by birth, who at the time of his appointment was professor of law at the University of Toronto, lectured at Osgoode Hall Law School, and is now Dean of Law at the University of Windsor and who at the time he served on the Special Committee and until his departure from Toronto was President of the Canadian Civil Liberties Association; Mr.

Shane MacKay, who was then executive editor of the Manitoba Free Press; and the Honourable Pierre-Elliott Trudeau, then professor of law at the University of Montreal.

The members of this Special Committee on Hate Propaganda were members of the bar who traditionally and professionally are alert and conscientious in the defense and protection of the freedoms of the individual, sensitive to any attempt to deprive the citizen of the basic and fundamental rights which are his in law; a sociologist and political scientist who have studied social problems and political trends and who are well informed on the vexing complexities of our society; and a journalist who has a personal and professional stake in freedom of the press and freedom of expression and who has reason to be vigilant about any measure that would diminish or inhibit this freedom.

This body of men composed, we repeat, of persons dedicated to our tradition of free speech and civil liberties and having examined in detail the evidence, some of which you have seen and which you will find permanently embodied in their Report, determined unanimously that the protection of individuals as members of groups in our society required the enactment of legislation to curb the spreading of racial and religious hatred.

Their conclusions were:

> that freedom of speech is not an unqualified right; (1)
>
> that the law has exerted a role in balancing conflicting interests;
>
> that in this delicate balancing preference must always be given to freedom of speech rather than to legal prohibitions directed at abuses of it; the legal markings of the borderline

(1) Report of the Special Committee on Hate Propaganda in Canada 1965, page 60, 1.5 ff.

areas should be such as to permit liberty even at the cost of occasional licence;

that at the point that liberty becomes licence and "colours the quality of liberty itself with an unacceptable stain the social preference must move from freedom to regulation to preserve the very system of freedom itself" (1)

that with respect to the offense of genocide or its advocacy no social interest whatever exists in allowing the promotion of violence even at the highest level of abstract discussion: "the act is wrong absolutely, i.e. in all circumstances, degrees, times and ways". (2)

that the distribution of hate propaganda reported in all parts of Canada is a serious problem; (3)

that this material can not in any sense be classed as sincere, honest discussion contributing to legitimate debate, in good faith about public issues in Canada; (3)

that given a certain set of socio-economic circumstances, public susceptibility to such material might increase significantly and that its potential psychological and social damage "both to desensitized majority and to sensitive minority groups is incalculable" (4)

that our Canadian law is "clearly...inadequate" with respect to the intimidation and threatened violence against groups and "wholly lacking" and "anachronistic" in the control of group defamation (5)

(1) Report, page 61
(2) Report, page 63
(3) Report, page 59
(4) Report, page 59
(5) Report, page 59

and finally -

that the interest of our society requires legislation curbing such excesses and that appropriate legislation would constitute a needed control over excesses of speech and not an infringement of freedom and speech. (1)

These conclusions were reached after many months of factual study, discussion and examination, and having regard to the many conflicting interests involved in any examination of such a problem.

Dealing with the question of incitement of hatred which leads to a disturbance of the peace the Committee stated that "To our minds the social interest in public order is so great that no one who occasions a breach of the peace, whether or not he directly intended it, should escape criminal liability where the breach of the peace is reasonably foreseeable, i.e. likely" (2). The requirements are that these statements must be made in a "public place", they must create "hatred and contempt" against a racial religious or ethnic group and they must be likely to lead to a breach of the peace". These provisions, the Committee feels, "will protect fully all legitimate discussion". (3)

With respect to extending the protection against defamation enjoyed by the individual to the group the Committee finds that

> "there is needed a criminal remedy for group defamation that would prohibit the making of oral or written statements or of any kind of representations which promote hatred or contempt against any identifiable group. Identifiable group we propose to define as any section of the public distinguished by religion, colour, race, language, or ethnic or national origin." (4)

The Report states further that

> "We are convinced that the evidence justifies this policy judgment and that in our present stage of social development the law must begin to take account of the subtler sources of civil discord." (5)

(1) Report, page 60
(2) Report, page 63
(3) Report, page 64
(4) Report, page 64
(5) Report, page 65

The Committee Report then discusses the safeguards it feels should be written into a law of this kind and goes on to say:

> "The history of law and opinion as concurrent developments is replete with instances...not only where law reflected the state of opinion but where a fluid opinion was itself crystallized by law. This generation of Canadians is more sensitive to the dangers of prejudice and vicious utterances than ever before. Such public opinion, therefore, should now be prepared to crystallize these sensitivities, fears and doubts into positive statements of self-protecting policy - namely statements of law."(1)

We shall return to the content of the Report of the Spcial Committee. Let us now turn for a moment to another jurisdiction.

The British Experience

Frequently in public discussion of this question references are made to "Speakers' Corner" in London's Hyde Park where it is stated that any person could rise and speak his piece on any theme, subject to no restriction whatsoever. What are the facts on Hyde Park?

Great Britain is rightly regarded as the source and fountain-head of our traditional freedoms. The inviolability of British civil freedoms has always been the envy of other lands and political systems. Great Britain, recognizing the need for the balancing of the same conflicting interests, has after considerable debate and discussion enacted a Race Relations Act. This Race Relations Act not only bans discrimination - something eight out of ten Canadian provinces already have undertaken - but outlaws the defamation of racial and ethnic groups. And the British law, we might add, does not possess the protective safeguards that are written into the Bill before your Committee.

This Race Relations Act of the United Kingdom has been in force since October of 1965 and has been invoked several times. On a recent occasion it was used to restrain the call to violence against the White majority element by a leader of what has been called the Black Nationalist movement. There

(1) Report, page 67

has been no complaint editorially by the ever-vigilant British press or by the legal profession that has come to our attention - and we have followed affairs there rather closely - and no evidence that the fibre of British parliamentary democracy is any the weaker. On the contrary it has emerged re-inforced and sounder.

It should be clear that many people labour under a misapprehension with regard to Hyde Park. Hyde Park is, of course, not immune from the provisions of the Race Relations Act. Speeches given there are as much subject to the law of the land as those given elsewhere.

Great Britain has recognized the need for group protection of this kind; we with our more varied population make-up have even more reason to do so.

Psychological and Psychiatric Aspects

Under this heading our presentation is based on the evidence offered by two outstanding studies. The first is the Social Psychological Analysis of Hate Propaganda done by Dr. Harry Kaufmann (formerly associate professor of Psychology at the University of Toronto, now on the faculty of Hunter College in the City University of New York) appearing as Appendix II of the Report of the Special Committee.

It is generally agreed that law has a duty to secure the integrity of citizenship and of citizens. In respect to racial and religious discrimination this obligation is directed not so much at punishing the person who practises discrimination but to underline the principle of equality of citizenship. Groups of people must not be denigrated. It is the proper function of law to ensure the fair treatment of citizens. This is the principle underlying the Human Rights laws and the anti-discrimination laws of Canada and of eight of our provinces going back to the first enactment in Ontario in 1944 of a law which forbade the display of placards indicating racial or religious discrimination.

Professor Kaufmann's study is concerned with the communicators of hate propaganda, its recipients, and the target group. His study confirms that such propaganda can gain and has gained acceptance and compliance, that

> "recipients will be receptive to hate literature to the extent that they believe themselves to be threatened and consider action open to them which can eliminate this threat". (1)

As for the target group, he states:

> "Through no fault of his own, a member of society is being degraded and humiliated. He is on guard against the insults, the sarcasm, the cruel humour accorded to his group..." (2)

He concludes by saying

> "The writer is not competent to judge the possible legal side effects of legislations applicable to the problem at hand, but has considerable evidence of the undesirable effects of hostility-generating propaganda, both upon potential converts and targets." (3)

Dealing further with the possible effects of legislation he says it may create

> "A reassuring knowledge to targets and potential victims that they enjoy the clear protection of society not only against physical attack or individual calumny, but also against the threats and vilification directed against them as members of a religious, ethnic, racial, or other group. It is quite likely that such a reassurance through legislation would go a long way toward removing motives for unregulated self-protection" (4)

We occasionally hear the comment that the hate material circulated is so childish and unbelievable that it would incite hatred and contempt for its authors rather than the persons against whom it is directed.

We are quite prepared to concede that this is the reaction of many normal people. If we were not living in a period when the world saw the planned extermination of an entire people preparatory to the destruction of other European people and races - an event which happened only yesterday and whose survivors are living amongst us, we would be quite prepared to accept this apparently "normal" reaction to the extremities and absurdities of hate

(1) Report, page 196
(2) Report, page 214
(3) Report, page 230
(4) Report, page 230

propaganda. But we know that these things did happen. Despite the apparent juvenile and self-evident absurdity of the propaganda an entire death machine functioned in Europe in the 1940's which carried out a literal implementation of the threats of hate propaganda.

In 1967 a volume appeared entitled "Warrant for Genocide" by Norman Cohn, Director of the Centre of Research in Collective Psychopathology of the University of Sussex. Professor Cohn's book is an extended analysis of the growth and expansion of the myth of a world-wide Jewish conspiracy. We cannot hope within the limitations of our submission to give even a rough abridgment of its contents, but recommend it to the attention of the honourable Senators. Suffice it to say that it is an exposition of how a myth - a demonstrably false myth, and one that maligns an entire people - can take hold of the credibilities of wide masses to the extent that it helped prepare the atmosphere and climate for the genocide of World War II. The internal inconsistencies and contradictions of this libel - in Russia the propaganda pictured the nefarious plotters as allied with the Germans, in Germany as joined with Britain and France, and in Britain as linked with Russia and Germany - in no way inhibited its spread and acceptance.

This material, specifically the forgery known as "The Protocols of the Elders of Zion",is no stranger to this country and to this continent, and is still in circulation.

We commend Dr. Cohn's book to your study as the examination of a clinical case of the distribution of material that is false and maligns and directs hatred and contempt against a religious group. Neither its evident absurdity nor its extremes of fantasy prevented it from becoming a powerful motivating force and accessory to widespread destruction and bloodshed.

That the implications of this propaganda is related to its nature rather than to its volume is suggested by a finding of the Special Committee:

> "The amount of hate propaganda presently being disseminated and its measurable effects probably are not sufficient to justify a description of the problem as one of crisis or near crisis proportions. Nevertheless the problem is a serious one. We believe that, given a certain set of socio-economic circumstances, such as a deepening of the emotional tensions or the setting in of a severe business recession, public susceptibility might well increase significantly. Moreover, the potential psychological and social damage of hate propaganda, both to a desensitized majority and to sensitive minority target groups, is incalculable. As Mr. Justice Jackson of the United States Supreme Court wrote in Beauharnais v.Illinois, such 'sinister abuses of our freedom of expression....can tear apart a society, brutalize its dominant elements, and persecute even to extermination, its minorities'." (1)

The Committee is warning here that it is not quantity that is important in the spreading of hate propaganda but the danger that such material by providing a breeding ground might create a deterioration of the atmosphere, a deterioration whose consequences we have seen.

In this connection we have a third document that is directly relevant. Less than two years ago a psychiatric report prepared for use in the Ontario Court of Appeal was provided by way of affidavit by a Toronto psychiatrist in the case of a resident of that city facing a charge of assault occasioning bodily harm which arose from one of the incidents in Allan Gardens precipitated by a neo-Nazi agitator. The appeal was taken against a prison sentence, the accused having pleaded guilty. The appeal, we may add, was successful.

Having recounted in this psychiatric report the personal history of the defendant during the Nazi holocaust, the imprisonment, the torture, the personal brutality and beating, the planned starvation and the annihilation of his family, the report then deals with the events at Allan Gardens in the summer of 1965.

(1) Report, page 59

"On May 30, 1965, one of his friends invited him to come along to Allan Gardens where a Nazi demonstration was scheduled. He could not believe that such a thing was possible and he went along to the meeting place, partly out of curiosity and partly to express his opposition to a revival of the dreaded past. He was shaken up by the horrible idea that his children might lose their lives in a Nazi crematorium which he had seen in function while in concentration camps. At the sight of the Nazis with their swastikas the assembled crowd started shouting and running towards them. Suddenly he felt hot and feverish and everything was boiling inside him and he was unable to control himself when he became part of the fighting mob. When taken to the police station his mind went blank and he was unable to think of anything but of his family".

The psychiatrist goes on to say the following:

"As a result of my studies and my experience in practice, and my interview with Mr. D-, it is my opinion in regard to him that,
(a) Mr. D- is one of those survivors of the Nazi holocaust who have tried to bury the unfortunate past by adjusting themselves to the society of their choice which was helpful in the process of repressing the past to a considerable degree. His hate against his criminal tortures was never allowed to find an outlet, neither during the years of persecution nor following the Nazi empire's breakdown. However, it was sufficiently securely repressed and chances are that it would never have come to the fore without the provocation of a public Nazi demonstration. The latter may appear childish, silly and ridiculous to the majority of people who were not directly afflicted by the Nazi atrocities. On the other hand to a person who has been a personal victim of these atrocities with all their consequences to himself and to his beloved ones, a demonstration must evoke the most profound fears leading to a loss of control which would be unthinkable under any other circumstances. To this person it means the most horrible threat of an imminent or already existing revival of the past, threatening his very existence and possibly destruction of his family. It is well known that this type of experienced threat, although irrational in the eyes of the unbiased observer, is apt to create a state of panic with short circuit reaction, loss of control and violence. This process is much more likely to occur in a group than when the person is confronted with this situation as an individual."

There is much more in the psychiatrist's analysis and we append it herewith.

The Law as Public Policy

In the 1940's and to some extent in the 1950's in the effort for fair employment and fair housing legislation we found ourselves immersed in the debate as to whether education or legislation were more effective instruments in coping with the social problem of racial and religious discrimination. Time has fortunately resolved that debate. The experience with such laws in Canada since 1951 has

established, as we argued then, that the two instrumentalities must accompany each other - and that legislation is itself an extremely effective form of education. The existence of these laws, public knowledge of them and their enforcement are acts which are themselves educative in nature, and which reflect public policy as enunciated by government.

The Bill before us deals with a question on which the government cannot be neutral any more, as is now recognized, than it can be neutral on racial and religious discrimination in employment and housing. It will stand as a formulation of public policy expressing the wish and goal of this nation as represented by its Parliament.

The Need for Legislation

In confirmation of our position on the need for effective legislation we cannot better underline our view than to cite to this Committee the very cogent words of Chief Justice Gale of the Ontario Supreme Court who addressed the York County Law Association in Toronto in the following words in part:

> "As you know, all criminal law involves a balancing of the rights of the individual on the one hand, and the rights of society on the other. Our Criminal Code is a statement of the rules which have evolved to place limits on the freedom of action of every individual so as to safeguard the basic rights and freedoms of all individuals...
>
> Let me give a very simple illustration of the problem involved. Freedom of speech is a time-honoured liberty in Western legal systems, and has now been made a part of the Canadian Bill of Rights. But it is not, as it cannot be in any organized society, an unlimited right. The right to speak one's mind is not a licence to preach vilification and violence...
>
> ...Recently, we have all been made aware of the inability of our present legislation to curb the evil outpourings of 'hate propaganda'. The Attorney-General of Ontario has stated his view that the existing provisions of the Criminal Code cannot stop this despicable flow of speeches and writings. Certainly, here is an example of a situation where the individuals' freedom of expression must give way to the broader interests of social cohesion and racial and religious freedom...

It is my concern that too much stress has been laid upon the privileges of the individual, as an isolated person, an island unto himself, and not enough upon the duties and obligations which are his as a member of that society. In my view, it is the 'rights' of society that are experiencing a subtle but continual erosion, and individual liberty, far from diminishing, is expanding to the detriment of the collective safety and welfare.

I realize, of course, that this is not a popular position to take before a gathering of lawyers. Traditionally, and properly, the role of the lawyer has been to protect the interests of the individual, and his historical rights and immunities. Such a role is no more than natural; after all, the lawyer is retained by a person or by a group of persons for that very purpose. He is trained from the first that it is not only his prerogative but his duty to kpee his client out of the clutches of the law. The state, acting on behalf of the individual, defends. The whole tradition of the common law justly favours the man accused of an offence; and the first lesson law students are taught is that it is far better that one hundred guilty men go free than that one innocent man be punished for a crime he did not commit.

I do not quarrel with these principles. Indeed, I subscribe to them without reservation. However, what does concern me is that, in carrying out its time-honoured responsibilities, the legal profession is at times prone to lose sight of the public welfare. May I remind you that it is our duty to see that the interests of the community, as well as those of the individual, are recognized and protected.

The real difficulty, of course, is to maintain a proper balance between personal rights and the common welfare. To achieve anything approaching such a balance has always been a formidable task. It is destined, however, to become an even greater one unless we take care to ensure that the fundamental right of the community to protection is not dissipated by exaggerated solicitude for the immunities of its members...

My principal object this evening has been to bring to your attention the need for the legal profession to be as jealously vigilant of the public welfare as it has traditionally been of the welfare of the individual. Without question or doubt, one of the greatest principles in our criminal jurisprudence is that which ensures that a man is presumed to be innocent until he is proven guilty beyond a reasonable doubt. I wholeheartedly and sincerely subscribe to that rule. But there is another fundamental and essential principle that operates in our criminal philosophy, and it is this: the criminal law exists not for the protection of the individual as such, but for the protection of society as a whole.

> In these days, I fear that too little attention is paid to this latter principle. It is our duty and responsibility - all of us engaged in the administration of justice - to ensure that it is honoured and preserved."

The Bill and its Safeguards

The Bill at present before you substantially follows the Report of the Special Committee on Hate Propaganda save in two respects. No one to our knowledge opposes the ban it proposes to place on genocide or counselling genocide, it being in substantial agreement with the United Nations recommendations on this subject, and it commends itself to the conscience of all civilized nations.

The section on incitement to violence proposed in Bill S-5 under Section 267B (1) is a refinement of other provisions already included in the Criminal Code. In very large measure some of the critics of this section proceed on a preconceived notion of what it says, not having taken the trouble of reading its text. The taking of an action likely to lead to a breach of the peace is a criterion known in the Criminal law. Under this section it is not what is said that is crucial but whether it is linked with a breach of the peace - a situation, as stated, familiar to our law.

The Report of the Special Committee throws light on the need for this section:

> "..It is readily apparent that it should be unlawful to arouse citizens deliberately to violence against an identifiable group, and in our understanding of Canadian law this already may be proscribed by the present rules in the Code governing sedition (although this is not absolutely certain). But the social interest in the preservation of peace in the community is no less great where it may not be possible for the prosecution to prove that the speaker actually intended violence against a group, or where the wrath of the recipients is turned, not against the group assailed, but rather against the communicator himself, and the breach of the peace takes a different form from that which he was likely to intend. In neither case, of course, do we wish to suggest that the attackers who themselves commit a breach of the peace should not be criminally liable, and there is little doubt that they are already liable under

> existing criminal law. But the gap in the law today derives from the fact that it does not penalize the initiating party who incites to hatred and contempt with a likelihood of violence, whether or not intended, and whether or not violence takes place." (1)

The third provision - Section 267B (2) - deals with what is called group defamation. It is important to bear in mind the requirements of this offense:

a) the action of promoting hatred or contempt must be wilful, i.e. a deliberate and intentional act,

b) the statement must be untrue, and,

c) the statement must be one which the accused did not believe on reasonable grounds to be true, or the public discussion of which would not be for the public benefit.

If a defamatory statement is deliberately made about an identifiable group within the definition of the Bill, and the person issuing this statement can show no reasonable grounds to believe it true, and if its public discussion is not for the public benefit - what possible protection is owed to such gratuitous and malignant sowing of hatred? If a person knows his tale is false and does not care a whit for the repercussions of the statement, if it has no relevance to the public interest and brings hatred and contempt upon a racial, ethnic or religious group - surely he should face the consequences of this act? The honest statement is protected while the dishonest and malicious one constitutes an offence.

These defenses in our view are safeguards that offer full protection to freedom of speech and freedom of expression. If statements are true, we are fully content that they be made without let or hindrance; if discussion of such statements is in the public interest and if it be found that the speaker or writer had reasonable grounds to believe them true, we are

(1) Report, page 63

satisfied that there should be no interference with them. These are defenses that are already present in the Criminal Code in respect of defamatory libels and we do not quarrel with their inclusion in this legislation. We go further - we would oppose legislation that does not have these built-in safeguards to protect the full and free debate of social issues centering on the uninhibited discussion of controversial social issues.

Some critics complain of the onus being on the accused to give evidence to support these defenses. This is in keeping with the rules in all defamation cases, the onus being on the accused to establish the truth of his statements. Surely it is not up to the person maligned to prove that he is not guilty of the charges any opponent may dream up?

We would like at this juncture to return to the defense of truth as mentioned earlier. There are a variety of offenses known to our law involving defamation and the use of language, where the truth of the statements cannot be used as a defense. These include seditious libel, (section 60 of the Criminal Code), scurrility (section 153) and obscenity (section 150). The broadcasting regulations of the Board of Broadcasting Governors which forbid the broadcasting of "any abusive comment or abusive pictorial representation on any race, religion or creed" (1) do not contain this defense either.

By raising this we do not mean to suggest that this defense is not in place. We approve it and have said so in this submission. We are raising it to point out that this bill contains a vital safeguard which is not available as a defense in numerous other offenses in our Criminal Code and government regulations.

(1) Canada Gazette Part II, vol. 98, Feb. 12, 1964, page 172

No "Gag-law"

We wish to make an additional observation. The Report of the Special Committee on Hate Propaganda and the provisions of Bill S-5 do not envisage prior censorship. This bill places no "prior restraint" upon speakers or writers. No public official or policeman has the right to ban any written material or to prevent a speaker from expressing himself. It has no quality of what is called "prior jeopardy" in American legal terminology. Only a properly constituted court of law is qualified to deal with it when charges are laid after the speech is made or the article published. The full procedural requirements must, of course, as in all our criminal courts be completely adhered to. Neither policeman nor magistrate can interfere in advance and forbid any actions or words. All this is left to the courts and to the courts alone to decide. Talk of a "gag-law" or of capricious and dictatorial banning of speakers or articles is irresponsible and unwarranted in the face of the clear provisions of the bill.

Permission of the Attorney General

We should point out to the Committee the remarks of Chief Justice Wells of the Ontario High Court of Justice in a recent public address in Toronto.

Chief Justice Wells said:

> "...when, however, it (i.e. 'international defamation which is sometimes used to the disadvantage and hurt of the Jewish people') reaches the extremes which it has done in our own experience and lives it would seem to demand something more and the power of the state must, I think, be invoked to protect any group which is subject to the vilification which has been expressed from time to time in various parts of the world..."

He went on to say:

> "I would personally advocate the necessity of obtaining the consent of one of the Attorneys General of a province or of the Attorney General of Canada...before such charges should be proceeded with. As long ago

> as 1938 Chief Justice Duff, in dealing with problems not too different from the defamation of a racial minority, pointed out that already under the law, the right of public discussion is subject to legal restrictions and these he based upon considerations of decency and public order and the protection of various private and public interests, which for an example, are protected by the laws of defamation and sedition. He defined 'freedom of speech' by quoting some words of Lord Wright in a famous judgment where he said that 'freedom of speech is freedom governed by law.'"

Chief Justice Wells also said:

> "...it is vitally important that when some law to regulate attacks of this sort is finally put in legislative form, it should be one which will hold the balance between fair speech and freedom of expression on the one hand, and ordinary decency on the other.

It may well be that Chief Justice Wells' suggestion as to an Attorney General's fiat being a condition precedent to a prosecution is one which should be given effect to.

Definition of Identifiable Groups

We have a question to posit on the definition of identifiable groups: the category of "religion" has been omitted from the list of descriptive qualifications. This in our view is a serious omission. It was present in the recommendations of the Report of the Special Committee and we can find no adequate reason for its removal. We understand the reluctance of the drafters to include religion if they had the idea that religious controversy would in some way be inhibited or constrained. This is in no way intended. Nothing in the bill in any way restrains the discussion of religious views, doctrine, dogma or conviction. It is hatred or contempt against the people who are embraced by the religious definition. Criticism of Judaism, Mormonism, Catholicism, Buddhism, or Islam could not possibly come under such a provision. It is when members of such groups are subjected to hatred and contempt quite apart from their beliefs and convictions that it is felt the protection is needed. It is not enough to say that religion is something anyone can change for himself. For most of us our religious affiliation is something we are born into and which we cherish deeply, not

to be shed or cast aside lightly. It is as much a part of our character, personality, and identity as our race and nationality, possibly more so. We have no objections to our religious views and practices being publicly discussed and argued, even criticized. There are a host of views held by various religions on a wide variety of subjects - all of which are constantly discussed in the public forums and which we fervently hope will continue to be discussed as long as our present political system lasts. But when charges are made, for instance, that Jews require human blood for ritual purposes, surely this kind of abusive defamation of a group should be covered in the legislation.

We appreciate that an alternative category may be provided, that some groups - the Jews for instance, perhaps the same may apply to the Mennonites - may be considered under the category of an ethnic group. We do not wish to enter into the controversy of whether the Jews are a racial group, an ethnic entity, or a religious communion. There is no doubt in our mind that a case could be made out for each of the latter two categories, neither of which excludes the other. However, the religious element is common to both. Even the so-called secularist Jew, though he may not himself subscribe to all the tenets and practices of Judaism, will concede that the Jewish religion is the historic source of Jewish values from which their ethical imperatives are derived. The most consistent and historic definition of Jewry and Jewishness, the one common to Jews of all lands, is its basic religious identification. It would be a mockery of the intention of this legislation if for flimsy pretexts the category of religion were omitted.

One explanation is that the Jewish group would be embraced in the definition of the other two categories. The other two categories, we presume, would be race and ethnic origin. We would unequivocally reject race as a

category as contrary to scientific knowledge and to Jewish tradition. As for ethnic origin, as stated above, we would not deny categorically that Jews are an ethnic group. However, it is apparent that Jews themselves differ on this definition. In the censuses of 1931 and 1941 the difference between the number of Jews in Canada who were Jewish by ethnic origin and those who were Jewish by religion was less than one percent. However, in the next two decades, perhaps due to growing nativization and acculturation, the discrepancy between the two figures widened. Of the 204,836 Jews by religion in the 1951 census, 11.3% were of some other ethnic origin. Of the 254,368 Jews by religion in the 1961 census, a much higher figure of 31.9% (81,024) were reported to be of some other ethnic origin. It is apparent therefore that many - almost 32% of the Jews in this country - account themselves or are accounted to be Jewish by religion only and not by ethnic origin. The rest are content to be identified with both categories.

What emerges from this is that, however they may differ on the question of ethnic origin, Jews clearly constitute a religious group. The same may well be said of other religious groups.

We respectfully suggest, therefore, that in 267B (5)(b) the word "religion" be added to "colour, race, or ethnic origin" as a means of identification.

Wide Supportfor Legislative Action

Since 1964 when a group of hate-mongers stepped up their agitation there has been a persistent feeling by Canadians in all walks of life, from all political parties, and from a representative cross-section of their communal organizations, that the government has a responsibility in curbing this

unrestricted hate dissemination. This support has not been couched in terms of specifying the precise nature of the laws needed, but it has clearly stated that legal measures should be taken. It has come via unanimous resolutions of the Manitoba and Ontario legislatures, a resolution of the Executive Committee of Metropolitan Toronto, resolutions of the Canadian Federation of Mayors and Municipalities and the parallel Ontario organization, the City Council of London, Ontario and the East Nova Scotia Mayors' Association. Three barristers' organizations - the Canadian Bar Association, the York County Law Association, and the Manitoba Bar Association - have passed similar resolutions. The Canadian Baptist Federation sent a wire to the Prime Minister asking for remedial action, the Rev. James Hutchmor, speaking in Winnipeg as Moderator of the United Church of Canada spoke similarly, as did the Anglican Bishop of Toronto. The National Council of Women of Canada and the Canadian Legion, assembled in convention, expressed the desire for such measures as did several local Rotary and Kivanis groups.

These spontaneous expressions reflect a groundswell of opinion across Canada that a curb be placed on the gratuitous and deliberate dissemination of hatred against racial and religious groups.

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We appear before you today in support of the legislation embodied in Bill S-5 which we feel, subject to the comments we have made in several respects, is on the whole wisely conceived and drafted. The danger of hate propaganda, as has been stated, lies not in its quantity or volume but in its intrinsic quality, a quality which undermines the climate of our public life.

Having said this, we state, nevertheless, that there has really not been a serious abatement in the currency and distribution of this propaganda. Only this month a local distributor was delivering such leaflets in London, Ontario, notice of which was sent to the office of the Attorney General of Canada. Within the past year the city of Winnipeg was plagued by the persistent smearing of hate slogans. Material continues to enter Canada freely from abroad. The time to enact such legislation is now. A measure passed in this session would establish that Canada feels strongly enough about its democratic values and the integrity of the spoken and written word to take a positive step to protect these values.

We have summarized the findings of the Special Committee - basically that legislation curbing incitement to violence and hate propaganda is called for. We have mentioned the example of Great Britain where similar legislation was introduced in recent years. We have referred to the disturbing psychological and psychiatric implications of hate propaganda, citing three significant documents - the study by Dr. Harry Kaufmann as embodied in the Report of the Special Committee, "Warrant for Genocide", a book by a noted British psychologist on the myth of the world conspiracy, and how this myth gained acceptance, and a psychiatric report on a survivor of the death camps presented to the Ontario Court of Appeal. We have dealt with the safeguards the legal draughtsmen have written into the Bill to ensure protection of freedom of speech, and have shown that the defense of truth is available in this Bill though it is not present as a defense in a number of other allied offenses. We have established that this proposed legislation does not permit any prior censorship of speech or writing and we have suggested that the consideration might be given to the fiat of the Attorney General being a requirement for prosecution. We have entered a

We have entered a strong plea for the inclusion of religion as a quality of an identifiable group. We have listed the number of professional, communal and political organizations who have asked for the law to intervene in this vital area of human relations.

We urge you, Honourable Senators, to give this Bill your scrutiny and attention, for we are optimistic that a close examination of its measures will reveal the positive benefits that will flow from it. This is an opportunity to demonstrate in a practical and affirmative way that in this International Year for Human Rights Canada is serious in the defense of her democratic pattern of life and values and intends to offer these full protection in law.

We look forward with confidence to your Committee commending the Bill before you.

Respectfully submitted,

Michael Garber, Q.C.
National President
Canadian Jewish Congress

Louis Herman, Q.C.
Chairman
National Joint Community Relations
Committee of Canadian Jewish Congress
and B'nai B'rith

Ottawa
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